

Islamic Law: Theory & Interpretation

Michael Mumisa

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If Michael Mumisa's goal in his monograph *Islamic Law: Theory & Interpretation* is to reacquaint the relatively advanced student with, or perhaps even introduce the intelligent novice to, the early historical development of Islamic law (*fiqh*) and Islamic jurisprudence (*usul al-fiqh*), it can be said fairly that his work does an adequate job. It would, however, be too generous to hold that it succeeds according to his wishes in making a significant advancement – even if limiting one's scope to the English medium only – toward Islamic jurisprudence's theoretical or interpretive development.

This outcome is unfortunate, given the promising first chapter that showcases the author's relative familiarity with the plight of the modern world vis-à-vis the traditional outlook, as well as his cognizance of the impracticability of applying Islamic jurisprudence in the modern world, dominated as it is by competing secular and profane forces at every practical level of law, polity, and policymaking. Very few, if any, contemporary Islamic jurists (*fuqahā'*) or legal scholars (those steeped in *fiqh* or *usul al-fiqh* but not licensed to practice) demonstrate *a priori* knowledge of the nuances of modernity's philosophical underpinnings sufficient enough to engage in any meaningful discourse that would constitute an enduring guidepost by which, as Mumisa proposes, to "revive and broaden the discipline of *usul al-fiqh* in order to bring about a methodology which will truly enable us [i.e., Muslims] to refer all our matters to Allah and His Messenger." Upon learning of Mumisa's motivation, the Muslim reader's cautious optimism is that, finally, here comes one of those rare Islamic legal scholars who can identify the modern world's intellectual errors as well as those of the contemporary Muslims who deal with them.

Not so fast. Throughout the first chapter and the remainder of the book, Mumisa's rhetoric is at worst confused (thus, confusing) as well as internally inconsistent. It can be described even as sentimental, insofar as it reflects incidentally in its form the author's sentiments. In other words, the rhetoric's point of departure is determined more by feeling than by objective reality. The most obvious expression of this sentimentality and internal inconsistency is Mumisa's rhetoric relating to economic law, which is sometimes socialist if not Marxist in tone. This is an oddity, given that socialism and Marxism embody modern materialist perspec-

tives and that modernity's traps are what Mumisa explicitly sets out early on to overcome.

This does not suggest that Mumisa condemns everything modern or always misidentifies modern ideas as Islamic, for his call to revivify Islamic jurisprudential activity rightly leaves room for integrating certain modern tools into the fold of Islamic legal thought – so long as these unidentified tools do not clash with the Islamic ethos. For example, his mandate that a revived Islamic economic law satisfy “the perennial requirement for economic justice and distributive prosperity” should be viewed in this latter rhetorical light. Despite occasional lapses in the body of his argument, perhaps due to his lack of familiarity with philosophic alternatives to modernity (namely, the traditional school), he nevertheless succeeds in drawing something like a line in the sand in the context of the Islamic legal sciences between a traditional Islamic worldview and a modern one, as the powerful works of S. H. Nasr, R. Guénon, M. Lings, and others have drawn in the context of the intellectual sciences. If Mumisa's work can be viewed as making any valuable contribution, this shallow yet explicit “line in the sand” would be it.

Without dwelling any further on the monograph's inherent ideological components, it should be noted that the bulk of Mumisa's text is not dedicated to ideological or legal philosophical discourse. Instead, he concentrates on explaining many of the Arabic terms relating to Islamic jurisprudence as well as describing the historical development of Islamic law and Islamic jurisprudence. This is standard fare in such works, and does not differ substantially from what one finds in M. Kamali's well-known primer on *Islamic Jurisprudence* or in the Orientalists' recent primers. In comparison to recent works by Muslim authors in the West, one does not find any real overlap between Islamic Law and the excellent works of K. Abou El Fadl, S. Jackson, and E. Winkel, each of whom – in particular E. Winkel in his *Islam and the Living Law* – offer theoretical contributions to Islamic jurisprudence in the English medium in greater depth and detail than Mumisa.

Mumisa's work is divided into six substantive chapters. Chapter 1 pertains to the definition, rationale, and methodology of Islamic jurisprudence. Chapter 2 discusses the Qur'an and the Sunnah as the primary sources of Islamic law. Chapter 3 explains views on the jurisprudential concept of *ijma'* (general consensus). Chapter 4 surveys such secondary sources of Sunni Islamic law as *masalih al-mursalah*, *istihsan*, *istidlal*, *istihbab*, *istishab*, *urf*, and *adah*. Chapter 5 discusses the notion of *taqlid* as well as the scholarly

views of the Sunni legal schools and their founders. Lastly, chapter 6 purports to offer a new methodology in the study of Islamic law.

The first and last chapters contain most of Mumisa’s ideological or legal philosophical discourse. Chapters 2 through 5 contain the bulk of his exposition and, from time to time, offer gems of insight in the form of anecdotes or quotations from original scholarly texts. Just as frequently, however, *Islamic Law* is marred by blatant misspellings and other recurring editorial mistakes, which one may assume are no fault of the author.

This monograph is available in standard quality paperback and has been cataloged by the Library of Congress as a work, first, of Islamic law – Philosophy, and, second, Islamic law – Interpretation and Construction. Overall, it must be said that *Islamic Law* is a welcome though not crucial addition to one’s English language library of Islamic jurisprudence.

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